

No. 12288

United States
Court of Appeals
For the Ninth Circuit.

KAJ THEILL and RAYMONDE M. THEILL,
Appellants,

vs.

CHARLES W. WHITLOCK,
Appellee.

Transcript of Record

Appeal from the United States District Court
Northern District of California,
Southern Division.

FILED

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PAUL P. O'BRIEN,
CLERK

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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in *italic*; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in *italic* the two words between which the omission seems to occur.]

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NAMES AND ADDRESSES OF ATTORNEYS

CHRISTIN, KEEGAN & CARROLL,

550 Russ Building,

San Francisco, California.

Attorneys for Defendants and Appellants.

STEVENSON, CRAWFORD and SHOLARS,

578 Flood Building,

San Francisco, California.

Attorneys for Plaintiff and Appellee.

In the District Court of the United States for the
Northern District of California, Southern Division

No. 28206-R

CHARLES S. WHITLOCK,

Plaintiff,

vs.

KAJ THEILL and RAYMONDE M. THEILL,

Defendants.

COMPLAINT FOR INJUNCTION, RESTITU-
TION AND TREBLE DAMAGES

Plaintiff complains of the defendants and each of
them and for cause of action alleges:

Count I.

I.

That defendants and each of them are engaged
in actions and practices which constitute a violation
of Section 4(a) of the Emergency Price Control
Act of 1942 as amended (hereinafter called the Act).

II.

The jurisdiction of this action is conferred upon
this court by Sections 205 (a) and 205 (c) of the
Act.

III.

That at all times herein mentioned plaintiff re-
sided in a Basement Apartment, located at 2364

Vallejo Street, in the City and County of San Francisco, State of California as a tenant, in the premises of the landlord, the defendants herein.

IV.

That at all times herein mentioned there has been in full force and effect pursuant to the Act, the Rent Regulations for Housing, hereinafter called the Regulation, establishing maximum rentals for the use and occupancy of housing accommodations within the defense rental area in which the housing accommodation referred to in Paragraph III herein is located.

V.

That on or about the 4th day of January, 1946 the Officers of the San Francisco Bay Defense-Rental Area, by authority of the Act fixed the maximum rent for the housing accommodation described in Paragraph III herein at \$2.50 per day if occupied by two persons and \$2.00 per day if occupied by one person. The said maximum rent fixed as aforesaid was based upon the statement of the owner of said premises described in Paragraph III that said owners did and would thereafter among other things furnish the occupying tenant with (a) electricity, (b) towels and linens, and (c) daily maid service. That the maximum rent and services to be rendered by the landlord as aforesaid have not been modified or changed in any respect.

VI.

That plaintiff and no other person has occupied said premises described in Paragraph III herein from the first day of July, 1946, to and including the twenty-third day of July, 1948, both days included, a period of 751 days.

VII.

That the defendants have failed, neglected and refused to furnish this plaintiff with (a) electricity, (b) towels and linens, and (c) daily maid services during the entire period of tenancy by this plaintiff.

VIII.

That disregarding the maximum rent fixed as aforesaid by Officers of the San Francisco Bay Defense-Rental Area, the defendants demanded, and the plaintiff paid, rent in the sum of \$70.00 per month for the months of July, August, September, October, November and December, 1946, and January, 1947, that for the remainder of the period beginning February 1, 1947, and ending July 31, 1948, a total of 18 months, defendants demanded and plaintiff paid rent in the sum of \$67.50 per month. That payment for the month of July, 1948, was paid on the 30th day of June, 1948. That the total rent paid defendants by plaintiff the period of 760 days beginning July 1, 1946, and ending July 31, 1948, both days included, amounts to \$1,705.00. That plaintiff by reason of the failure and refusal of defendants to furnish plaintiff with electricity for the said premises has been compelled to and has paid for such electric service, a total of \$83.14. That by

reason of the failure, neglect and refusal of the defendants to furnish this plaintiff with towels and linens and daily maid service for the rental period beginning July 1, 1946, and ending July 31, 1948, both days included, plaintiff has been compelled to and has supplied himself with such services. That plaintiff has been informed and upon such information believes and therefore alleges that the furnishing of towels and linens and daily maid service is reasonably worth 65 cents per day. That the total value of said service amounts to the sum of \$494.00. Plaintiff sets forth his account showing overcharges as follows:

Total rent paid.....\$1,705.00

Electricity paid for by plaintiff 83.14

Towels and linens and daily
maid service supplied plain-
tiff by himself of the rea-
sonable value of..... 494.00

Total cost to plaintiff..\$2,282.14

Maximum rent allowable as set

forth in Paragraph V herein \$1,520.00

Total cost to plaintiff over and above the

allowable rent as set forth in Para-
graph V herein.....\$ 762.14

IX.

That by reason of the facts stated in Paragraphs V, VI, VII, and VIII herein the total cost of the

occupancy of the said premises described in Paragraph III herein for the period of 760 days beginning July 1, 1946, and ending July 31, 1948 (both days included) amounts to \$762.14.

Wherefore, plaintiff prays judgment as follows:

1. That a permanent injunction issue enjoining the defendant, her attorneys, agents and employees, and all persons in active concert or participation with her, from directly or indirectly, demanding or receiving rents for the premises described in Paragraph III herein, in excess of the maximum rents established by any regulations or order heretofore or hereafter adopted by the Emergency Price Control Act of 1942 as amended, and the Housing and Rent Act of 1947, as amended, extended or superseded.

2. Judgment for the plaintiff for three times the amount by which the rentals demanded and received by the defendant from this plaintiff for the period stated in Paragraph VIII herein exceeds the lawful amount amounting to the total sum of \$2,286.42.

3. For reasonable attorney fees as may be fixed by the court.

4. For costs of action.

WALTER S. STEVENSON,
A. L. CRAWFORD and
BRUNSWIG SHOLARS,
By /s/ WALTER S. STEVENSON,
Attorneys for Plaintiff.

State of California,
City and County of San Francisco—ss.

Charles S. Whitlock, being first duly sworn, deposes and says:

That he is the plaintiff in the above-entitled action; that he has read the foregoing complaint and knows the contents thereof; that the same is true of his own knowledge except as to the matters which are therein stated on information or belief, and as to those matters that he believes it to be true.

/s/ CHARLES S. WHITLOCK.

Subscribed and sworn to before me this 23rd day of July, 1948. .

[Seal] /s/ JACOB S. MEYER,
Court Commissioner in and for the City and County
of San Francisco, State of California.

[Endorsed]: Filed July 23, 1948.

[Title of District Court and Cause.)

MOTION TO DISMISS

Come now the defendants above named and file this their Motion to Dismiss the proceedings herein on the following grounds, to-wit:

I.

That there is a lack of jurisdiction of the subject matter in the above entitled Court.

II.

That there is a lack of jurisdiction over the persons named herein as defendants.

III.

That the above entitled Court is the improper venue for the filing of the complaint in the above entitled matter.

IV.

That the complaint does not state a claim upon which relief can be granted. The complaint does not state a claim upon which relief can be granted in that the complaint seeks an injunction to enjoin the defendants and all persons in consort or participation with them, demanding or receiving rent from the premises described in Paragraph III of the complaint, whereas under the Act of Congress known as the Price Control Extension Act of 1946, which Act is known as the Act of July 1, 1947, no such remedy is provided for a tenant; exclusive right to apply for relief is in the Housing Expediter and not in the tenant or the plaintiffs in these proceedings.

Wherefore, defendants pray that the proceedings herein be dismissed.

/s/ CHARLES A. CHRISTIN,

/s/ T. J. KEEGAN,

/s/ EARL CARROLL,

Attorneys for Defendants.

Authorities

Rental Control Act of July 1, 1947, Sec. 205 and 206 (a) and (b).

Affidavit of service by mail attached.

[Endorsed]: Filed August 27, 1948.

[Title of District Court and Cause.]

ANSWER

Come now Kaj Theill and Raymonde M. Theill, the defendants above named, and answering plaintiff's complaint on file herein, admit, deny and allege as follows:

I.

Deny each and every, all and singular, the allegations contained in paragraph I of said complaint, and in this respect allege that at no time did they violate any of the provisions of Section 4(a) of the Emergency Price Control Act of 1942, as amended, or any section thereof.

II.

Deny each and every, all and singular, the allegations contained in paragraph II of said complaint.

III.

Admit the allegations of paragraph III of said complaint, and in this respect allege that during the entire term of the tenancy referred to in said paragraph III the said plaintiff shared said premises with one or more persons, and that at all times during said tenancy two or more persons occupied the said premises.

IV.

Deny each and every, all and singular, the allegations contained in paragraph IV of said complaint.

V.

Deny each and every, all and singular, the allegations contained in paragraph VI of said complaint, and in this respect allege that the premises described in paragraph III of said complaint, from the 1st day of July, 1946, to and including the 23rd day of July, 1948, a period of 751 days, were occupied by persons other than the plaintiff.

VI.

Deny that they have failed, neglected and refused to furnish the plaintiff with (a) electricity, (b) towels and linens, and (c) daily maid service during the entire period of tenancy by the plaintiff, and in this respect allege that they did not furnish the said services, and in this respect defendants further allege that on or about the 1st day of July, 1946, by an oral agreement, the defendants leased to the plaintiff and the plaintiff leased from the defendants the premises known as and described in paragraph III of said complaint on a month to month basis at a monthly rental of \$70.00 per month, payable monthly in advance on the first day of each and every month, and that by the terms of said agreement it was provided that no electricity, towels and/or linens, or daily maid service would be furnished, and at said time it was agreed by and between the parties that the rent as fixed by the Office of Price Administration, to wit, \$75.00 per month for two persons, would be reduced to the rental of \$70.00 per month by reason of the elimination of said services.

That from the 1st day of July, 1946, to the 31st day of January, 1947, the said plaintiff paid to the defendants as rent for said premises the sum of \$70.00 per month, and that beginning February 1, 1947, the rent was reduced to the sum of \$67.50 per month, and that ever since said 1st day of February, 1947, the plaintiff paid to the defendants, as rent for the said premises, the sum of \$67.50 per month.

VII.

Answering the allegations of paragraph VIII of said complaint, defendants admit all of the allegations contained therein commencing with line 24 on page 2, down to the words "amounts to \$1705" on line 1 of page 3; deny each and every, all and singular, the remaining allegations contained in said paragraph VIII.

VIII.

Deny each and every, all and singular, the allegations contained in paragraph IX of said complaint.

IX.

Deny that the plaintiff is entitled to an injunction, temporary or permanent.

As and for a Second, Further, Separate and Distinct Defense to Plaintiff's Complaint on File Herein, Defendants Allege:

I.

That said action is barred by the provisions of

Section 205 (e) of the Emergency Price Control Act of 1942, as amended.

As and for a Third, Further, Separate and Distinct Defense to Plaintiff's Complaint on File Herein, Defendants Allege:

I.

That all acts done by them with reference to said tenancy and with the said plaintiff were in good faith and after the taking of reasonable precautions, and not in an attempt to evade the provisions of the Emergency Price Control Act of 1942, as amended, and in this respect defendants allege that at no time did they demand or receive from the plaintiff any sum or sums in excess of the rental fixed by the Office of Price Administration for said premises under the 1942 Rent Control Act, to wit, the sum of \$2.50 per day, and defendants further allege that on or about July 8, 1946, at the time that the premises referred to in the complaint were rented to the plaintiff without the service of electricity, towels and linens and maid service, they did cause to be filed with the Office of Price Administration a report in writing indicating the decrease in service, and that since the filing thereof they have received no communication or order reducing the rental from the amount originally established by said Office of Price Administration, to wit, the sum of \$2.50 per day for two persons.

Wherefore, defendants pray that plaintiff take

nothing by his complaint on file herein, and that they have judgment for their costs incurred herein.

CHRISTIN, KEEGAN &
CARROLL,

By /s/ CHARLES A. CHRISTIN,
Attorneys for Defendants.

State of California,
City and County of San Francisco—ss.

Raymonde M. Theill, being first duly sworn, deposes and says:

That she is one of the defendants in the above-entitled action; that she has read the foregoing Answer and knows the contents thereof; that the same is true of her own knowledge except as to matters which are therein stated on information or belief, and as to those matters that she believes it to be true.

/s/ RAYMONDE M. THEILL.

Subscribed and sworn to before me this 8th day of November, 1948.

[Seal] /s/ LOUIS WIENER,
Notary Public in and for the City and County of
San Francisco, State of California.

Affidavit of service by mail attached.

[Endorsed]: Filed November 9, 1948.

District Court of the United States, Northern
District of California, Southern Division

At a Stated Term of the Southern Division of the United States District Court for the Northern District of California, held at the Court Room thereof, in the City and County of San Francisco, on Tuesday, the 25th day of January, in the year of our Lord one thousand nine hundred and forty-nine.

Present: the Honorable Michael J. Roche,
District Judge.

[Title of Cause.]

MOTION TO DISMISS DENIED

This case came on regularly this day for trial before the Court sitting without a jury. Brunswig Sholars, Esq., and Walter S. Stevenson, Esq., were present on behalf of the plaintiff, and Charles Christin, Esq., was present on behalf of the defendant. Mr. Christin made a motion to dismiss. Ordered that said motion be denied. Messrs. Sholars and Christin each made an opening statement to the Court. Morley Goldberg, Charles S. Whitlock, Raymonde Theill, Martin H. Clark, and Hersch Howard were sworn and testified as plaintiff's witnesses. Mr. Sholars introduced in evidence and filed Plaintiff's Exhibits Nos. 1 and 2. Mr. Christin introduced in evidence and filed Defendant's Exhibits A, B, and C, and the plaintiff rested. Raymond Theill was recalled and gave further testimony on behalf of the defendant, and

the defendant rested. Walter S. Stevenson was sworn and testified on behalf of the plaintiff, and both sides rested. It is Ordered that this case be continued to January 28, 1949, for further trial.

[Title of District Court and Cause.]

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This cause came on for hearing and was heard on the 25th day of January, 1949, by the Court without a jury, the plaintiff being present with his counsel, Walter S. Stevenson and Brunswig Sholars, and the defendant, Raymonde M. Theill, being present with her counsel, Charles A. Christin, testimony was taken and exhibits offered in evidence, whereupon said cause was continued for further hearing. Further hearing was held on the 28th day of January, 1949, at which time the same parties, together with their counsel as above stated, were present and further testimony was taken and exhibits offered and received in evidence. The cause was then continued for the filing of briefs. Later, on the 28th day of March, briefs having been filed by both plaintiff and defendants, the cause was submitted for decision.

Findings of Fact

The Court being fully advised in the premises finds:

That the plaintiff was a tenant of the defendants

at 2364 Vallejo Street, in the City and County of San Francisco, State of California, for the period alleged in the complaint; that the jurisdiction of this Court is confined to that period of tenancy prior to the first day of July, 1947; that the remedy of the plaintiff, if any, for the period beginning July 1, 1947, is vested in the Director of the San Francisco Bay Defense Rental Area.

That the tenancy of the plaintiff in defendants' premises began on the first day of July, 1946, and that for the twelve-month period next ensuing plaintiff paid a monthly rental of \$70.00 per month for seven months and a monthly rental of \$67.50 per month for five months. That the total rent paid defendants for the twelve months next ensuing after the said first day of July, 1946, was the sum of \$827.50. That prior to the tenancy of the plaintiff, on the 4th day of January, 1946, the Director of the San Francisco Bay Defense Rental Area had by law fixed the maximum rent for the occupancy of said premises at \$2.50 per day when occupied by two persons and \$2.00 per day when occupied by one person. That the plaintiff was the sole and only occupant of said premises. That by reason of the premises the defendants for said twelve-month period demanded and the plaintiff paid to them as rental the sum of \$97.50 in excess of the maximum rent allowed for said premises as fixed by said Rent Director.

That the defendants were bound by the Registration Certificate on file in the office of the San

Francisco Bay Defense Rental Area to furnish plaintiff with electricity, daily maid service, and linens. That during the period of tenancy of plaintiff the maximum rent as fixed by said Director of the San Francisco Bay Defense Rental Area was not altered, amended, or changed and remained in full force and effect during said twelve-month period.

That the maximum rent for said twelve-month period at \$2.00 per day (the occupancy being by one person only) amounts to \$730.00. That it cost the plaintiff the following sums to supply himself with the several items required to be furnished by the defendants under the provisions of the Registration of said premises with the office of the Director of the San Francisco Bay Defense Rental Area:

Wear and tear on linens.....	\$ 9.00
Laundrying of linens.....	60.00
Electricity	42.00
Maid Service	96.00

A Total of.....\$207.00

That the plaintiff is entitled to recover costs and attorney fees in the sum of \$125.00.

Conclusions of Law

As conclusion of law from the foregoing facts, the Court finds that the plaintiff is entitled to a judgment against the defendants, and each of them,

in the sum of \$304.50 and \$125.00 for attorney fees and costs to date.

Let judgment be entered accordingly.

Dated this 13th day of April, 1949.

/s/ MICHAEL J. ROCHE,

United States District Judge.

Receipt of Copy attached.

[Endorsed]: Filed April 13, 1949.

In the Southern Division of the United States
District Court for the Northern District of
California

No. 28,206-R

CHARLES S. WHITLOCK,

Plaintiff,

vs.

KAJ THEILL and RAYMONDE M. THEILL,
Defendants.

JUDGMENT

This cause came on regularly for trial before the Court sitting without a jury, on the 25th day of January, 1949, and for further hearing on the 28th day of January, 1949, Walter S. Stevenson and Brunswig Sholars appeared as attorneys for the plaintiff, and Charles A. Christin appeared as attor-

ney for the defendants, and the Court having heard the testimony and having examined the proof offered by the respective parties, and Court being fully advised in the premises, and having filed herein its findings of fact and conclusions of law, and having directed that judgment be entered in accordance therewith; now therefore, by reason of the law and findings aforesaid:

It Is Hereby Ordered, Adjudged and Decreed, that plaintiff, Charles S. Whitlock, do have and recover of defendants, Kaj Theill and Raymonde M. Theill, the sum of \$304.50, together with plaintiff's costs and attorney fees in the sum of \$125.00.

Judgment rendered this 13th day of April, 1949.

/s/ MICHAEL J. ROCHE,
U. S. District Judge.

Receipt of copy attached.

Entered in Civil Docket April 14, 1949.

[Endorsed]: Filed April 23, 1949.

[Title of District Court and Cause.]

NOTICE OF APPEAL TO CIRCUIT COURT OF APPEALS

To the Circuit Court of Appeals:

Notice Is Hereby Given that Kaj Theill and Raymonde Theill, defendants in the above proceedings, hereby appeal to the Circuit Court of Appeals for the Ninth Circuit from the final judgment made

and entered on the 14th day of April, 1949, and a motion for a new trial denied by the District Court on the 9th day of May, 1949.

Dated: June 1, 1949.

CHRISTIN, KEEGAN &
CARROLL,

By /s/ CHARLES A. CHRISTIN,
Attorneys for Defendants.

[Endorsed]: Filed June 1, 1949.

[Title of District Court and Cause.]

CERTIFICATE OF CLERK TO
RECORD ON APPEAL

I, C. W. Calbreath, Clerk of the District Court of the United States of America for the Northern District of California, do hereby certify that the foregoing documents and exhibits, listed below, are the originals filed in this Court, or true and correct copies of orders entered on the minutes of this Court, in the above-entitled case, and that they constitute the Record on Appeal herein, as designated by the Attorney for the Appellants, to wit:

Complaint for Injunction, Restitution and Treble Damages.

Motion to Dismiss.

Notice of Overruling of Motion to Dismiss Answer.

Demand for Jury Trial.

Order for Entry of Judgment.

Findings of Fact and Conclusions of Law.

Judgment.

Affidavit of Charles A. Christin in Support of Motion for New Trial and Motion to Vacate Judgment.

Motion for a New Trial and Motion to Vacate Judgment.

Notice of Appeal to Circuit Court of Appeals.

Designation of Contents of Record on Appeal.

Request for Dismissal of Appeal.

Minute Order of January 25, 1949, Denying Motion to Dismiss.

Minute Order of May 9, 1949, Denying Motion for a New Trial.

Plaintiff's Exhibits Nos. 1 and 2 (copy of Report of Change in Identity of Landlord).

Defendants' Exhibits Nos. A, B and C.

In Witness Whereof, I have hereunto set my hand and affixed the seal of said District Court this 8th day of July, A.D. 1949.

C. W. CALBREATH,

Clerk,

By /s/ M. E. VAN BUREN,

Deputy Clerk.

[Endorsed]: No. 12,288. United States Court of Appeals for the Ninth Circuit. Kaj Theill and Raymonde M. Theill, Appellants, vs. Charles W. Whitlock, Appellee. Transcript of Record. Appeal from the United States District Court for the Northern District of California, Southern Division.

Filed July 13, 1949.

/s/ PAUL P. O'BRIEN,
Clerk of the United States Court of Appeals for
the Ninth Circuit.

In the United States Court of Appeals
for the Ninth Circuit

No. 12,288

CHARLES S. WHITLOCK,
Plaintiff and Respondent,

vs.

KAJ THEILL and RAYMONDE THEILL,
Defendants and Appellants.

AMENDED DESIGNATION OF PORTIONS
OF RECORD ON APPEAL AND STATE-
MENT OF POINTS

The defendants and appellants Kaj Theill and Raymonde Theill hereby designate the following as the record on appeal:

1. Complaint for Injunction, Restitution and Treble Damages.
2. Motion to Dismiss.
3. Order Denying Motion to Dismiss.
4. Answer of Defendants Kaj Theill and Raymonde Theill.
5. Findings of Fact and Conclusions of Law.
6. Judgment.
7. Notice of Appeal.
8. Clerk's Certificate.

Statement of Points

The following are the statement of points to be relied upon on appeal:

The legal question presented from the pleading is:

Can a tenant recover money damages from a landlord for alleged diminution of services prior to the time that the Office of Housing Expediter shall have made an order fixing the rent of the premises without services which have been eliminated and can a tenant under the provisions of the Rent Control Act of 1947, as amended, maintain an action for an injunction against a landlord, or is the tenant's only relief under the provisions of the Act for treble damages being three times the amount

of the excessive rent found to have been paid by the tenant to the landlord?

CHRISTIN, KEEGAN &
CARROLL,

By /s/ CHARLES A. CHRISTIN,
Attorneys for Appellants.

Affidavit of service by mail attached.

[Endorsed]: Filed December 21, 1949.